

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

BRUCE R. MERRYMAN	§	
VS.	§	CIVIL ACTION NO. 1:23cv7
BRYAN COLLIER, ET AL.	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Plaintiff Bruce R. Merryman, an inmate at the LeBlanc Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought the above-styled lawsuit.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the action be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. Plaintiff filed objections to the Magistrate Judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff’s objections are without merit. Plaintiff’s complaints of alleged unconstitutional conditions of confinement including overcrowding, fights and drug use among other inmates, being hit by another inmate in the past, and alleged retaliation by officers fail to rise to the level of demonstrating he was in “imminent danger of serious

physical injury” at the time he filed the complaint. *See Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

Additionally, plaintiff’s contention that inmate Hardin paid the filing fee in the original case prior to the severance of plaintiff’s claims does not relieve plaintiff from being responsible for payment of the filing fee in this action. Since the enactment of the fee provisions of the Prison Litigation Reform Act (“PLRA”), courts have discouraged the joinder of multiple unrelated claims and parties to avoid paying the filing fee by creative joinder. *See Hubbard v. Haley*, 262 F.3d 1194, 1198 (11th Cir. 2001) (finding severance in multi-plaintiff prisoner action proper to prevent plaintiffs from circumventing PLRA’s unambiguous requirement that each plaintiff must pay the full filing fee); *Patton v. Jefferson Correctional Center*, 136 F.3d 458, 464 (5th Cir. 1998) (discouraging “creative joinder of actions” by prisoners attempting to circumvent the PLRA’s three-strikes provision). “[I]n the context of prisoner-litigation, ensuring that unrelated claims against different defendants are brought in separate actions safeguards the required fees in the Prison Litigation Reform Act.” *Spurlock v. Jones*, No. 2:16cv1031, 2016 WL 7443644 at \*1 (W.D. La. Dec. 22, 2016), *aff’d*, 709 F. App’x 293 (5th Cir. Jan. 16, 2018). Therefore, plaintiff is responsible for payment of the filing fee in this action, and his objections are without merit.

As plaintiff has more than three prior actions or appeals dismissed as frivolous or for failure to state a claim, he is barred from proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915(g).<sup>1</sup> Therefore, the action should be dismissed without prejudice.

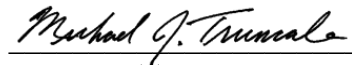
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<sup>1</sup> See *Merryman v. Tex. Bd. Of Pardons and Paroles*, No. 5:19cv333 (W.D. Tex. May 28, 2019) (dismissed as frivolous); *Merryman v. Tex. Bd. Of Pardons and Paroles*, No. 19-50585 (5th Cir. Oct. 19, 2020) (appeal dismissed as frivolous); *Merryman v. Davis*, No. 1:20cv392 (E.D. Tex. Sept. 28, 2022) (dismissed for standing and for failure to state a claim); and *Merryman v. Collier*, No. 1:20cv1 (E.D. Tex. Mar. 15, 2022) (dismissed for failure to state a claim).

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

**SIGNED** this 11th day of September, 2023.

  
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Michael J. Truncala  
United States District Judge